

September 21, 2005

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RIN: 1219-AB29 Comments

Dear Sir or Madam:

This correspondence is in response to requested comments with regard to the rule-making process relative to diesel particulate matter ("DPM") in underground mines.

The Mine Safety & Health Administration's ("MSHA" or "the Administration") proposal to revise the effective date of the final concentration limit by adopting a "phased-in" approach over the next six (6) years is a welcome gesture. Such a measured approach reinforces MSHA's commitment to the partnerships initiated with the 31- Mine study in 2002. Hanson, of course, participated in that initial study and has actively supported the progressive settlement agreements in the development of this rule.

Hanson concurs with the Administration that many of the assumptions made in 2001 to project the technological and economic feasibility of the rule have since been disproved. Variables in mine ventilation, along with physical control technologies that have progressed more slowly than anticipated, have left many operators unable to comply with the 160 microgram level with only four (4) months before scheduled enforcement. As MSHA has appropriately stated in Section IV of the *Preamble* published on September 7, 2005: *"The applications, engineering and related technological implementation issues that we believed would have been easily solved by now are more complex and extensive than previously thought."*

For that reason, Hanson applauds MSHA's efforts to develop a schedule that more appropriately anticipates the gradual advances that would enable operators to further reduce DPM exposure to miners. Recent regulatory data demonstrates that 73.8% of operations had exposures above the 160 microgram level. If those operations were forced to reach 160 $\text{TC}\mu\text{g}/\text{m}^3$ by January, many would have to reassess their ability to remain viable given the substantial compliance costs. When the mine goes away, so do the jobs.

Notwithstanding our appreciation for MSHA's efforts, we remain steadfast that the final concentration limit is invalid and must therefore be removed from the final rule. From the beginning of this process, MSHA has endeavored to develop a rule to bring miner's exposure to DPM to a level consistent with other industries. Initially, that level was determined to be 400 $\text{TC}\mu\text{g}/\text{m}^3$; thus, the "interim level" was determined accordingly. In

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response, the operators of Metal and Non-Metal mines have worked with MSHA to positively and successfully reduce exposures to the presumed level of other industries.

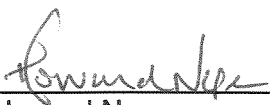
At this time, the underground Metal and Non-Metal mine operators can quantifiably demonstrate a level of protection for their employees unlike any other American industry. Nonetheless, MSHA wishes to mandate even stricter controls on the nation's 177 underground mines. Fundamental fairness dictates that requiring one small subset of one small industry to bear the significant burden of reaching an environmental exposure beyond what is required of any other American businesses -- without identifying a specific elevated risk -- is unjust at best and discriminatory at worst.

Accordingly, until a specific elevated risk is identified in an underground mine or a verifiable exposure limit established by reviewed scientific study, the final concentration limit must be removed from the rule. The federal government's more appropriate course of action would be the continued enforcement of the existing $400 \text{ TC}\mu\text{g}/\text{m}^3$.

As stakeholders in this issue, Hanson will be represented in the upcoming public hearings. We intend to use that opportunity to communicate our experiences in reducing DPM as a response to MSHA's request for information related to feasibility issues.

We thank you for this opportunity to comment and look forward to further participation in the process.

Sincerely,
Hanson Aggregates, Inc.

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